IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.1012/2006

Reserved on:8.4.2008

Decided on:28.5.2008

Asha Devi and others. **…Petitioners.**

Versus

State of H.P. and others. **…Respondents**

Coram

The Hon'ble Mr. Justice Deepak Gupta, J.

The Hon'ble Mr. Justice Rajiv Sharma, J.

Whether approved for reporting ?[1]. No.

For the petitioners : Mr. Shrawan Dogra, Advocate.

For the respondents : Mr. R.M. Bisht, Deputy Advocate General for respondents No.1 and 2.

: Mr. G.D. Verma, Senior Advocate with Mr. B.C. Verma, Advocate for respondent No.3.

Per Rajiv Sharma, J.

The brief facts necessary for the adjudication of this petition are that vide notification No. PCH-HA(4)59/76 dated 6th April, 1978 by excluding two villages, namely, "Beyong-Tatwa" and "Shilahan" from the then existing Gram Panchayat "Tikri Dasakna" a new Gram Sabha, namely, "Beyong Tatwa" was constituted. It is evident from the notification dated 6th April, 1978 annexed by respondents No.1

---

[1] ***Whether the reporters of Local Papers may be allowed to see the judgment***? No.

and 2 with the reply that the headquarters of the newly created Gram Sabha was also fixed at Beyong-Tatwa. However, the headquarters of the Gram Panchayat became functional at village Korag in a rented accommodation provided by one Sh. Gopal Singh at a monthly rent of Rs. 25/-. It appears from the pleadings that in the year 1991, an amount of Rs. 45,000/- was sanctioned for the construction of the Panchayat Ghar at Beyong- Tatwa under Jawahar Rozgar Yojna and an installment of Rs. 15,000/- was released to the Gram Panchayat. Since the foundation of the Panchayat Ghar was not proper, the Pradhan of the Gram Panchayat, Beyong-Tatwa was directed to demolish the raised walls and excavate the foundation properly in the presence of the Junior Engineer. The second installment of Rs. 18,000/- was released to the Gram Panchayat on 15th October, 1997.

Mr. Shrawan Dogra, Advocate appearing on behalf of the petitioners had strenuously argued that taking into consideration the parameters provided under the Himachal Pradesh Panchayati Raj Act, 1994, village Korag is the most suitable place for fixing the headquarters of the Gram Panchayat and for the construction of Panchayat Ghar. He also submitted that sub-post office, civil dispensary and Government Senior Secondary School are situated in village Korag and village Korag is well connected with the road.

The learned Deputy Advocate General had argued that the headquarters are to be fixed strictly as per section 3 of the Himachal Pradesh Panchayati Raj Act, 1994 and according to him presently the Panchayat affairs are being run from the newly constructed

Panchayat Ghar at village Beyong-Tatwa as per notification dated 6th April, 1978.

Mr. G.D. Verma, Sr. Advocate appearing on behalf of the private respondents had submitted that the Gram Panchayat had passed a resolution on 2.7.2006 and 5.11.2006 whereby a decision has been taken to construct the Panchayat Ghar at Beyong-Tatwa.

We have heard the learned counsel for the parties and have perused the record carefully.

The headquarters of the Gram Sabha/Gram Panchayat are required to be fixed as per the norms laid down in section 3 of the Himachal Pradesh Panchayati Raj Act, 1994 after taking into consideration the geographical location, means of transport and communication and administrative convenience etc. In the present case though as per notification dated 6th April, 1978, the headquarters of the Gram Sabha/Gram Panchayat was fixed at Beyong-Tatwa, but the affairs of the Gram Sabha/Gram Panchayat were being run from the rented accommodation of one Sh. Gopal Singh from village Korag. The State had provided the necessary funds for the construction of Panchayat Ghar in the year 1991-92. The Gram Panchayat had passed resolution as per the pleadings of the parties for constructing the Panchayat Ghar at Beyong-Tatwa.

Mr. Shrawan Dogra, Advocate had strenuously argued that the petitioners including the Vice President have not been taken into confidence by the Gram Panchayat since the meetings are being convened by the Pradhan at places of his choice to avoid the presence of other members of the Gram Sabha/Gram Panchayat to

discuss the issue of construction of Panchayat Ghar. The parallel meetings were also convened by the other members of the Gram Panchayat with regard to where the Panchayat Ghar should be constructed. There is a detailed procedure provided under the Himachal Pradesh Panchayati Raj Act, 1994 and the rules framed there-under for convening the meetings of the Gram Sabha/Gram Panchayat. The meeting should ordinarily be held as per the law prescribed and there should not be any departure from the same. The purpose of convening the general/special meeting of the Gram Sabha/Gram Panchayat is to facilitate maximum representation/participation of the members to strengthen the democracy at the grass root level. However, if there is any reasonable apprehension in the mind of the members of the Gram Sabha or elected members of the Gram Panchayat, a neutral venue can be fixed for effective participation/representation by all the members of the Gram Sabha/Gram Panchayat to facilitate the proper implementation of the Himachal Pradesh Panchayati Raj Act, 1994.

It is also true that in matters of policy decision, the scope of interference by the Courts is very limited. The petitioners have to establish infringement of fundamental right or any statutory right to enable the Court to exercise judicial review. The Court will not generally substitute its own judgment for the judgment of the executive in such matters as held by the Hon'ble Supreme Court in ***State of U.P. and others versus Chaudhari Ran Beer Singh and another***, 2008 (3) Scale 611 wherein their Lordships while deciding

the issue where the headquarters of District should be located have held as under:

> **"Cabinet's decision was taken nearly eight years back and appears to be operative. That being so there is no scope for directing reconsideration as was done in Ram Milan's case, though learned counsel for the respondents prayed that such a direction should be given. As rightly contended by learned counsel for the State, in matter of policy decisions, the scope of interference is extremely limited. The policy decision must be left to the Government as it alone can decide which policy should be adopted after considering all relevant aspects from different angles. In matter of policy decisions or exercise of discretion by the Government so long as the infringement of fundamental right is not shown. Courts will have no occasion to interfere and the Court will not and should not substitute its own judgment for the judgment of the executive in such matters. In assessing the propriety of a decision of the government the Court cannot interfere even if a second view is possible from that of the government."**

It is evident from the facts enumerated hereinabove that parallel meetings of the Gram Panchayat are being convened by the members. The meetings of the Gram Panchayat are convened to discuss the vital issues. It is a question of very vital public importance where the headquarters of a particular Gram Panchayat should be located. The headquarters of the Panchayat as per notification dated 6th April, 1978 was fixed at Beyong-Tatwa,

however, the functions of the Gram Pancahyat were carried out from rented accommodation situated in village Korag.

However, the contention of Mr. Shrawan Dogra, Advocate is only to the extent that a meeting of the Gram Sabha may be directed to be convened at a neutral venue for effective and maximum representation/participation of the members of the Gram Sabha to resolve where the Panchayat Ghar of the Gram Panchayat should be constructed.

We are of the considered view after taking into consideration the totality of the facts and circumstances of the present case that it is a fit case where this Court can issue directions for convening of a special meeting of the Gram Sabha at a neutral venue to discuss the issue of construction of the Panchayat Ghar of the Gram Panchayat.

Consequently, we direct that a special meeting of the Gram Sabha be convened by the sub Divisional Officer (Civil), Paonta Sahib within a period of eight weeks from today to discuss only one agenda i.e. where the Panchayat Ghar of the Gram Panchayat should be constructed. The Sub Divisional Officer (Civil), Paonta Sahib will fix a neutral venue which will be duly notified in the entire Gram Sabha area. The meeting will be convened on a date to be fixed by the Sub Divisional Officer (Civil), Paonta Sahib, who will also supervise the proceedings of the special meeting of the Gram Sabha. Notice of the meeting shall be sent at least four weeks in advance to all the members of the Gram Sabha under certificate of posting. Notice of the meeting shall also be published by beat of drum in all the concerned villages. Notice of the meeting shall also

be published by affixing on all prominent public places in all the concerned villages. The record of the proceedings of the special meeting of the Gram Sabha will be prepared under the supervision of the Sub Divisional Officer (Civil), Paonta Sahib. The decision will be taken in the meeting by majority and the parties will abide by the same. The decision taken in the special meeting of the Gram Sabha will be conveyed to the State Government by the Sub Divisional Officer (Civil), Paonta Sahib for taking appropriate action in accordance with law.

Accordingly, in view of the observations made herein above, the writ petition is disposed of. There shall be no order as to costs.

(Deepak Gupta), Judge.

(Rajiv Sharma), Judge

May 28, 2008
Awasthi